

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No.: EB-SED-13-00012123 <sup>1</sup>
	)	
Constellium Rolled Products Ravenswood, LLC,	)	NAL/Acct. No. 201432100020
an indirect, wholly-owned subsidiary of	)	
Constellium N.V.	)	FRN: 0005812789

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 29, 2014****Released: May 29, 2014**

By the Commission:

**I. INTRODUCTION**

1. We propose a penalty of \$294,400 against Constellium Rolled Products Ravenswood, LLC (Constellium). Constellium apparently operated eight wireless radio stations without Commission authority for periods ranging from ten months to more than two years. In addition, Constellium apparently failed to obtain Commission consent prior to transferring ultimate ownership and control of its 12 wireless radio authorizations. We take this action as part of our duty to prevent unlicensed radio operations from potentially interfering with authorized radio communications in the United States, to facilitate the efficient administration of wireless radio authorizations, and to prevent the unauthorized transfer of radio authorizations to a potentially unqualified party or in a manner that might otherwise be inconsistent with the public interest.

2. As discussed below, Constellium<sup>2</sup>—the former licensee of eight expired Private Land Mobile Radio Service (PLMRS) stations and the licensee of four additional PLMRS stations at issue in this proceeding—apparently willfully and repeatedly violated Sections 301<sup>3</sup> and 310(d)<sup>4</sup> of the Communications Act of 1934, as amended (Act); Sections 1.903(a) and 1.948(a) of the Commission’s rules (Rules);<sup>5</sup> and the associated Commission orders requiring licensees to seek authority for any continued operation that occurs after a license expires.<sup>6</sup> Specifically, the apparent violations involve

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<sup>1</sup> The investigation into the unlicensed operation was initiated under File No. EB-SED-13-00008685 and subsequently assigned File No. EB-SED-13-00012123. The investigation into the unauthorized transfer of control was initiated under EB-SED-14-00015138, but is now associated with File No. EB-SED-13-00012123. Any future correspondence with the Commission concerning these matters should reflect the new case number.

<sup>2</sup> Constellium is an indirect wholly-owned subsidiary of Constellium N.V. It manufactures aluminum products for the aerospace, automotive, and packaging industries at its aluminum production plant in Ravenswood, West Virginia.

<sup>3</sup> 47 U.S.C. § 301. *See United States v. Diego Medina*, 718 F. Supp. 928, 928 n.1 (S.D. Fla. 1989) (“A primary responsibility of the FCC is to ensure that persons do not transmit radio signals within U.S. territorial boundaries without an FCC license.”); *see also United States v. Weiner*, 701 F. Supp. 14, 17 (D. Mass. 1988) (The provisions of the Communications Act apply to “all transmissions by radio which originate and/or are received within the United States”).

<sup>4</sup> 47 U.S.C. § 310(d).

<sup>5</sup> 47 C.F.R. §§ 1.903(a), 1.948(a).

<sup>6</sup> *See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, Report and Order, 13 FCC Rcd 21027, 21071, para. 96 (1998) (*Universal Licensing System Report and Order*) (adopting, *inter alia*, Section 1.949 of the Rules); Memorandum Opinion and Order on

Constellium's operation of eight PLMRS stations for approximately ten months to more than two years without the necessary Commission authority, Constellium's associated failure to file timely applications for authority to continue operating the stations, and its failure to obtain Commission consent prior to the transfer of control of 12 PLMRS station authorizations.

## II. BACKGROUND

### A. Operation of Eight PLMRS Stations Without Authority

3. The eight PLMRS stations that Constellium apparently operated without authority—call signs KA35814, KD39541, WNVG467, WNVG468, WNVG469, WNYG694, WPKP839, and WPKT215—were originally granted in 2001 to Pechiney Rolled Products LLC (Pechiney) for terms of approximately ten years.<sup>7</sup> In 2005, Pechiney changed its name to Alcan Rolled Products LLC;<sup>8</sup> and in 2009, the name of the licensee was further changed to Alcan Rolled Products – Ravenswood, LLC (Alcan).<sup>9</sup> Before any of the renewal applications for the eight licenses were due, Alcan was acquired by Omega US Holdings I LLC on January 4, 2011.<sup>10</sup> Following that transaction, the name of the licensee was changed to Constellium Rolled Products Ravenswood, LLC.<sup>11</sup>

4. The licenses for stations KA35814, WNVG467, WNVG468, and WNVG469 expired on January 22, 2011; the license for station KD39541 expired on January 23, 2012; the license for station WNYG694 expired on January 27, 2012; the license for station WPKP839 expired on June 11, 2012; and the license for station WPKT215 expired on June 27, 2012.<sup>12</sup> Nearly three months before each license expired, the Commission's Wireless Telecommunications Bureau (Wireless Bureau) sent courtesy "renewal reminder" notices to the license's address of record.<sup>13</sup> Each notice reminded the licensee that it had to file a renewal application before its license's expiration date if it planned to continue operating the station.<sup>14</sup> Despite these reminders, Constellium apparently failed to file a renewal application for each of

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Reconsideration, 14 FCC Rcd 11476, 11485–86, para. 22 (1999) (*Universal Licensing System MO&O*) (collectively, the *Universal Licensing System Orders*).

<sup>7</sup> See Universal Licensing System (ULS) File Nos. 0000322240 (KA35814) (granted January 13, 2001 for a term expiring January 22, 2011); 0000727782 (KD39541) (granted January 11, 2002 for a term expiring January 23, 2012); 0000322242 (WNVG467) (granted January 13, 2001 for a term expiring January 22, 2011); 0000322243 (WNVG468) (granted January 13, 2001 for a term expiring January 22, 2011); 0000322244 (WNVG469) (granted January 13, 2001 for a term expiring January 22, 2011); 0000727783 (WNYG694) (granted January 11, 2002 for a term expiring January 27, 2012); 0000918139 (WPKP839) (granted June 11, 2002 for a term expiring June 11, 2012); and 0000920493 (WPKT215) (granted June 12, 2002 for a term expiring June 27, 2012).

<sup>8</sup> See ULS File Nos. 0002357870 (KA35814), 0002357877 (KD39541), 0002357871 (WNVG467), 0002357872 (WNVG468), 0002357873 (WNVG469), 0002357879 (WNYG694), 0002357874 (WPKP839), and 0002357875 (WPKT215).

<sup>9</sup> See ULS File Nos. 0003948507 (KA35814), 0003948517 (KD39541), 0003948509 (WNVG467), 0003948510 (WNVG468), 0003948511 (WNVG469), 0003948519 (WNYG694), 0003948512 (WPKP839), and 0003948513 (WPKT215).

<sup>10</sup> See ULS File Nos. 0005755428 (KA35814), 0005756192 (KD39541), 0005755426 (WNVG467), 0005755423 (WNVG468), 0005756173 (WNVG469), 0005756184 (WNYG694), 0005756169 (WPKP839), and 0005756180 (WPKT215).

<sup>11</sup> See LOI Response, *infra* note 21, at 1–2, 10.

<sup>12</sup> See LOI Response at 3–4.

<sup>13</sup> See Automated Renewal Reminder Letters from the Wireless Bureau to Alcan Rolled Products – Ravenswood LLC, Reference Nos. 5040820 (Nov. 1, 2010) (KA35814), 5240778 (Oct. 31, 2011) (KD39541), 5040821 (Nov. 1, 2010) (WNVG467), 5040822 (Nov. 1, 2010) (WNVG468), 5040823 (Nov. 1, 2010) (WNVG469), 5240779 (Oct. 31, 2011) (WNYG694), 5333958 (Mar. 19, 2012) (WPKP839), 5345183 (Apr. 2, 2012) (WPKT215). See also *infra* note 24.

<sup>14</sup> *Id.*

the eight PLMRS station licenses. These eight licenses therefore automatically terminated on their respective expiration dates, thus prohibiting the stations' continued operation.<sup>15</sup>

5. More than two years after the first four of the stations had continued operating without authority past their license expiration dates, Constellium, on April 26, 2013, filed with the Wireless Bureau requests for Special Temporary Authority (STA) to continue operating the eight PLMRS stations (STA Requests).<sup>16</sup> In its STA Requests, Constellium stated that it had not been aware that the licenses for the stations had expired, and it acknowledged that it had continued to operate the stations past their licenses' expiration.<sup>17</sup> Constellium also stated that the facilities previously authorized by the expired PLMRS licenses were critical to Constellium's internal management and security operations, as well as to the safety of its employees.<sup>18</sup> On April 30, 2013, the Wireless Bureau granted the STA Requests for a term expiring on October 27, 2013.<sup>19</sup>

6. Because Constellium continued to operate the stations after their licenses had expired, the Wireless Bureau referred this matter to the Enforcement Bureau (Bureau). On August 2, 2013, the Bureau's Spectrum Enforcement Division issued a Letter of Inquiry (LOI) to Constellium and directed the company to submit a sworn written response to questions about its failure to file renewal applications for its eight PLMRS station licenses and its apparent unauthorized operation of the stations.<sup>20</sup> Constellium responded on September 3, 2013.<sup>21</sup> In its LOI Response, Constellium does not deny that it failed to file renewal applications for the eight PLMRS station licenses and that it continued operating the stations after their respective license expiration dates until it filed the STA Requests.<sup>22</sup> Constellium asserts that its failure to file timely license renewal applications was due to a variety of factors, including the company's purported unfamiliarity with the Commission's licensing requirements,<sup>23</sup> procedural and personnel changes that took place in connection with the Alcan acquisition,<sup>24</sup> and a seven-week strike by certain of

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<sup>15</sup> See 47 C.F.R. § 1.955(a)(1) (stating that "[a]uthorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed").

<sup>16</sup> See ULS File Nos. 0005755428 (KA35814), 0005756192 (KD39541), 0005755426 (WNVG467), 0005755423 (WNVG468), 0005756173 (WNVG469), 0005756184 (WNYG694), 0005756169 (WPKP839), and 0005756180 (WPKT215).

<sup>17</sup> See, e.g., ULS File No. 0005755426 (WNVG467), Attachment.

<sup>18</sup> See *id.*

<sup>19</sup> See ULS File Nos. 0005755428 (KA35814) (granted under call sign WQRE898); 0005756192 (KD39541) (granted under call sign WQRE906); 0005755426 (WNVG467) (granted under call sign WQRE896); 0005755423 (WNVG468) (granted under call sign WQRE895); 0005756173 (WNVG469) (granted under call sign WQRE901); 0005756184 (WNYG694) (granted under call sign WQRE904); 0005756169 (WPKP839) (granted under call sign WQRE899); and 0005756180 (WPKT215) (granted under call sign WQRE902).

<sup>20</sup> See Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Georgina L.O. Feigen, Esq., Counsel to Constellium Rolled Products Ravenswood, LLC (Aug. 2, 2013) (on file in EB-SED-13-00012123).

<sup>21</sup> See Letter from Georgina L.O. Feigen, Counsel to Constellium Rolled Products Ravenswood, LLC, to Jennifer Burton, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 3, 2013) (on file in EB-SED-13-00012123) (LOI Response).

<sup>22</sup> See *id.* at 1–11. Constellium states that it discovered its failure to file during its implementation of the Commission's January 1, 2013 narrowband transition requirements. See *id.*; see also *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 3034 (2003); Third Memorandum Opinion and Order, Third Further Notice of Proposed Rulemaking and Order, 19 FCC Rcd 25045 (2004).

<sup>23</sup> See LOI Response at 3.

<sup>24</sup> See *id.* at 3–4. Constellium also asserts that company personnel initially were not aware of the license expiration dates because the renewal notices were received at Alcan's corporate headquarters in Chicago and personnel at Alcan

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Constellium's Ravenswood plant employees.<sup>25</sup> Constellium states that it "regrets the lapse of FCC oversight that occurred," but asserts that the lapse in oversight was not intentional, and that such lapse "will not reoccur in the future given the many steps and precautions it has taken to remedy the situation."<sup>26</sup>

### **B. Unauthorized Transfer of Control of 12 PLMRS Authorizations**

7. On April 4, 2014, Constellium informed Bureau staff that it recently discovered that it had transferred control of its 12 PLMRS authorizations without obtaining prior Commission consent following an Initial Public Offering (IPO) by Constellium N.V. in May 2013.<sup>27</sup> Subsequently, on April 7, 2014, Constellium filed a request for an STA seeking Commission authority to continue operating its licensed PLMRS stations until such time as the Commission acts on its application seeking Commission consent to the transfer of control of those licenses (Transfer STA Request).<sup>28</sup> In its Transfer STA Request, Constellium states that, prior to May 29, 2013, Apollo Omega (Lux) S.a.r.l. (Apollo), a Luxembourg private limited liability company, owned 51 percent of the voting stock of Constellium's parent, Constellium N.V., and thereby exercised ultimate control over Constellium.<sup>29</sup> Following Constellium N.V.'s IPO on May 29, 2013, Apollo's ownership interest in Constellium N.V. dropped to 37 percent.<sup>30</sup> As a result, control over Constellium shifted from Apollo to Constellium N.V.<sup>31</sup> The Wireless Bureau granted the Transfer STA Request on April 10, 2014 for a term expiring on October 7, 2014.<sup>32</sup>

## **III. DISCUSSION**

### **A. Operation of Eight PLMRS Stations Without Authority**

8. Section 301 of the Act<sup>33</sup> and Section 1.903(a) of the Rules<sup>34</sup> prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by radio except in accordance with a Commission-granted authorization. Licensees that want to operate after their licenses'

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either did not forward the notices to Constellium in a timely fashion or did not address them to appropriate personnel. In this regard, we note that upon the consummation of the Alcan transaction, Constellium did not file administrative updates for the PLMRS stations through the FCC's Universal Licensing System to notify the Commission of the new mailing address to be used by the Commission to communicate with the licensee, as required by Section 1.5 of the Rules. 47 C.F.R. § 1.5. The renewal reminder notices were automatically sent to the licensee's then-existing address of record.

<sup>25</sup> See LOI Response at 5.

<sup>26</sup> *Id.* at 11.

<sup>27</sup> The authorizations at issue were the licenses for stations WPRI648, WNMX569, WYJ436 and WPMM819, and the eight STA grants referenced in note 19, *supra*.

<sup>28</sup> See ULS File No. 0006230954 (for licenses WNMX569, WPMM819, WPRI648, WYJ436). In October 2013, after the IPO had been completed, Constellium filed applications for four new PLMRS stations to replace its expiring temporary authorizations. According to Constellium, the frequencies associated with its eight temporary authorizations could be consolidated under four new PLMRS licenses. See Letter from Georgina L.O. Feigen, Counsel to Constellium Rolled Products Ravenswood, LLC, to Pamela Hairston and Paul Noone, Spectrum Enforcement Division, FCC Enforcement Bureau (Apr. 23, 2014) (Supplement to LOI Response) (on file in EB-SED-13-00012123).

<sup>29</sup> See ULS File No. 0006230954.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See ULS File No. 0006230954 (granted under call sign WQTT807).

<sup>33</sup> 47 U.S.C. § 301.

<sup>34</sup> 47 C.F.R. § 1.903(a).

expiration must affirmatively request continued operating authority from the Commission. The *Universal Licensing System Orders* mandate the filing of certain applications to obtain such authority.<sup>35</sup>

9. As a Commission licensee, Constellium was required to maintain its authorizations in order to continue to operate its PLMRS stations.<sup>36</sup> In its LOI Response, Constellium acknowledges that it had failed to renew its licenses for stations WNVG467, WNVG468, WNVG469, and KA35814, and admits that it had continued to operate these stations without Commission authority for more than two years: from January 2011, when the licenses expired, until April 26, 2013, when Constellium filed its STA Requests.<sup>37</sup> Constellium also acknowledges that it had failed to renew its licenses for stations KD39541 and WNYG694, and admits that it had continued to operate these stations without authorization for more than one year: from late January 2012, when the licenses expired, until April 26, 2013, when Constellium filed its STA Requests.<sup>38</sup> Finally, Constellium acknowledges that it had failed to renew its licenses for stations WPKP839 and WPKT215, and admits that it had continued to operate these stations without authorization for more than ten months: from June 2012, when the licenses expired, until April 26, 2013, when Constellium filed its STA Requests.<sup>39</sup> In addition, prior to seeking its STAs, Constellium failed to file any other applications for authority to continue operation of the stations. By operating the stations after the licenses had expired, Constellium apparently violated Section 301 of the Act<sup>40</sup> and Section 1.903(a) of the Rules;<sup>41</sup> and by failing to seek Commission authority for its continued station operations, Constellium apparently violated the *Universal Licensing System Orders* and associated rules.<sup>42</sup>

#### **B. Unauthorized Transfer of Control of 12 PLMRS Authorizations**

10. Under Section 310(d) of the Act, a Commission license may not be “transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such . . . license” until the licensee has sought and obtained

<sup>35</sup> See *Universal Licensing System Report and Order*, 13 FCC Rcd at 21071, para. 98 (directing licensees that fail to file timely renewal applications to submit a new application or, if necessary, an STA request); *Universal Licensing System MO&O*, 14 FCC Rcd at 11485–86, para. 22 (permitting, in the alternative, the acceptance and processing of late-filed renewal applications under certain circumstances). In the *Universal Licensing System MO&O*, the Commission expressly held that it could “initiate enforcement action against the licensee *for untimely filing and unauthorized operation* between the expiration of the license and the late renewal filing, including, if appropriate, the imposition of fines or forfeitures for these rule violations.” *Id.* (emphasis added). Section 1.949(a) of the Rules requires that licensees wishing to continue operations file renewal applications for wireless radio stations “no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.” 47 C.F.R. § 1.949(a). If a licensee fails to file a timely renewal application, the Commission requires such licensee to seek temporary or new operating authority.

<sup>36</sup> As noted above, the *Universal Licensing System Orders* and Commission precedent make clear that if a licensee continues to operate, it has an ongoing duty to seek Commission authority for such operations. See *supra* note 35. See also *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7433, para. 1 (2004) (stating that each Commission licensee is “charged with knowledge of the full range of its obligations, including its duty to timely seek renewal of its license to maintain operating authority”). We note that a failure to seek timely operating authority inhibits the Commission’s ability to fulfill its statutory obligations under Sections 301 (maintaining control of radio transmission and use of such channels for limited periods of time), 303 (assigning frequencies), and 307 of the Act (ensuring the fair, efficient and equitable distribution of radio service). 47 U.S.C. §§ 301, 303, 307.

<sup>37</sup> LOI Response at 7.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> 47 U.S.C. § 301.

<sup>41</sup> 47 C.F.R. § 1.903(a).

<sup>42</sup> *Universal Licensing System Report and Order*, 13 FCC Rcd at 21071, para. 98; *Universal Licensing System MO&O*, 14 FCC Rcd at 11485–86, para. 22; 47 C.F.R. § 1.949(a).



Commission approval.<sup>43</sup> Similarly, Section 1.948(a) of the Rules states that “authorizations in the Wireless Radio Services may be assigned by the licensee to another party, voluntarily or involuntarily, directly or indirectly, or the control of a licensee holding such authorizations may be transferred, only upon application to and approval by the Commission.”<sup>44</sup> In the instant case, the company admits that control of Constellium was transferred from Apollo to Constellium N.V. on May 29, 2013, and the record shows that this unauthorized transfer continued with respect to its licensed stations<sup>45</sup> for nearly one year, until the Wireless Bureau granted Constellium’s Transfer STA Request on April 10, 2014. By transferring control of its PLMRS authorizations without prior Commission consent, Constellium apparently violated Section 310(d) of the Act and Section 1.948(a) of the Rules.<sup>46</sup>

### C. Proposed Forfeiture

11. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>47</sup> Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>48</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>49</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>50</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>51</sup> The term “repeated” means the commission or omission of an act more than once or for more than one day.<sup>52</sup> Based on the record before us, Constellium’s apparent violations of Sections 301 and 310(d) of the Act, Sections 1.903(a) and 1.948(a) of the Rules, and the *Universal Licensing System Orders* and associated rules are both willful and repeated.

#### 1. Operation of Eight PLMRS Stations Without Authority

12. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors such as “the nature, circumstances, extent, and gravity of the violation and, with

<sup>43</sup> 47 U.S.C. § 310(d).

<sup>44</sup> 47 C.F.R. § 1.948(a).

<sup>45</sup> See *supra* note 28.

<sup>46</sup> 47 U.S.C. § 310(d); 47 C.F.R. § 1.948(a).

<sup>47</sup> 47 U.S.C. § 503(b).

<sup>48</sup> *Id.* § 312(f)(1).

<sup>49</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) . . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . . .”).

<sup>50</sup> See, e.g., *Southern Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>51</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>52</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>53</sup> Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and a base forfeiture amount of \$3,000 for failure to file required forms or information.<sup>54</sup> The Commission has held that a licensee’s continued operation without authorization and its failure to timely seek Commission authority for such operations constitute separate violations and warrant the assessment of separate forfeitures.<sup>55</sup> We note that Constellium failed to file either a timely renewal or any other application seeking authority to operate the stations. Accordingly, we propose separate base forfeiture amounts for each of Constellium’s apparent violations: \$10,000 for each of the eight stations that continued to operate without Commission authority, and \$3,000 for each failure to seek Commission authority for the stations, for a total base forfeiture of \$104,000.

13. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, however, we conclude that a significant upward adjustment is warranted. We are particularly concerned that Constellium’s apparent unlawful operation continued for an extended period of time. Constellium operated four PLMRS stations without authority for more than two years, two stations without authority for more than one year, and two others without authority for more than ten months. Significantly, Constellium continued to operate all eight stations for approximately ten months after it had confirmed that the station licenses had expired,<sup>56</sup> reflecting a deliberate intent to violate the Act and the Rules. As explained above, consistent with Section 301 of the Act, licensees who find themselves out of compliance with the licensing requirements should immediately cease unauthorized operation (which Constellium chose not to do) and seek temporary authority before continuing to operate.<sup>57</sup> Finally, we also recognize that Constellium’s parent company, Constellium N.V., is a multi-billion dollar global enterprise.<sup>58</sup> In this respect, the Commission has determined that large or highly profitable companies should expect the assessment of higher forfeitures for violations of the Act and the Rules.<sup>59</sup> Thus, to

<sup>53</sup> 47 U.S.C. § 503(b)(2)(E); see also 47 C.F.R. § 1.80(b)(8); *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100, para. 27 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>54</sup> 47 C.F.R. § 1.80(b); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17098–99, para. 22 (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”).

<sup>55</sup> See *supra* note 35; see also *Discussion Radio, Inc.*, 19 FCC Rcd at 7438, para. 15; *Union Oil Co. of Cal.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13806, 13809–10, para. 9 (2012) (*Union Oil*) (forfeiture paid).

<sup>56</sup> LOI Response at 4.

<sup>57</sup> In its LOI Response, Constellium asserts that the Ravenswood plant has its own fire department, ambulance, and medical personnel, and that a primary use of the PLMRS licenses is to provide immediate communications in the event of an emergency. LOI Response at 2. We find no merit in Constellium’s argument that its continued operation of the stations without authority well after discovery of the expiration of the station licenses was justified by its asserted use of the stations for public safety purposes. In this regard, we note that Commission rules expressly provide for expedited consideration of requests for STA if compelling circumstances are present. See 47 C.F.R. § 1.931(a)(1).

<sup>58</sup> Constellium N.V. reported revenue of approximately \$3.5 billion for the fiscal year ending Dec. 31, 2013. See Press Release, Constellium Reports Strong 2013 Financial Results (Mar. 20, 2014) (available at <http://www.prnewswire.com/news-releases/constellium-reports-strong-2013-financial-results-251149441.html>).

<sup>59</sup> It is well-established Commission policy to consider the revenues of a violator’s parent company in determining the violator’s ability to pay. See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099–17100, paras. 23–24 (cautioning all entities and individuals that, independent from the uniform base forfeiture amounts, the Commission will take into account the violator’s ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business, and noting that such entities should expect the forfeiture amount set out in a Notice of Apparent Liability

(continued...)

ensure that the forfeiture liability serves as an effective deterrent and not simply a cost of doing business for Constellium, a significant upward adjustment of the base forfeiture amount is further justified.

14. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none. We decline to downwardly adjust the forfeiture on the grounds that the violations allegedly resulted from Constellium's lack of knowledge of the expired licenses, changes in company procedures and personnel, and other circumstances asserted by Constellium.<sup>60</sup> The Commission has consistently held that lack of knowledge or erroneous belief does not warrant a downward adjustment of the forfeiture.<sup>61</sup> As the Commission has emphasized, "[a]ll licensees are responsible for knowing the terms of their licenses and for filing a timely renewal application if they seek to operate beyond that term."<sup>62</sup> In the absence of a timely renewal application, the Commission has clarified that *some* request for operating authority must be filed, noting that its "treatment of late-filed renewal applications should take into consideration the complete facts and circumstances involved."<sup>63</sup> It is also well established that administrative oversight, inadvertence, or changes in personnel are not mitigating factors.<sup>64</sup> Further, even though Constellium disclosed the violations prior to our investigation, Constellium acknowledged in its LOI Response that it became aware of the expiration of its eight PLMRS licenses in June or July of 2012, approximately ten months prior to the filing of its STA Requests.<sup>65</sup> The company's delayed disclosure of the violations causes us to decline

(Continued from previous page...)

for Forfeiture against them may in many cases be above, or even well above, the relevant base amount). *See, e.g., SM Radio, Inc.*, Order on Review, 23 FCC Rcd 2429, 2433, para. 12 (2008) (citations omitted); *Tesla Exploration, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 9808, 9811, para. 10 & n.20 (2012); *Union Oil*, 27 FCC Rcd at 13810, para. 10; *GCI Communications Corp.*, 28 FCC Rcd 12991 (Enf. Bur. 2013) (doubling base forfeiture based on company's ability to pay (reporting approximately \$710 million in annual revenues in 2012)); *Am. Movil, S.A.B. de C.V., Parent of Puerto Rico Tel. Co., Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8672 (Enf. Bur. 2011) (doubling the base forfeiture due to the company's size and gross revenues).

<sup>60</sup> See LOI Response at 3–5.

<sup>61</sup> See *Profit Enters., Inc.*, Forfeiture Order, 8 FCC Rcd 2846, 2846, para. 5 (1993) (denying the mitigation claim of a manufacturer/distributor that thought that the equipment certification and marketing requirements were inapplicable, and stating that its "prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed . . . ignorance of the law [is not] a mitigating factor"); *Lakewood Broad. Serv., Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438, para. 6 (1972) (denying a mitigation claim of a broadcast licensee who asserted an unfamiliarity with the station identification requirements, stating that licensees are expected "to know and conform their conduct to the requirements of our Rules"); *Kenneth Paul Harris, Sr.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 12933, 12935–36, para. 7 (Enf. Bur. 2000) (denying a mitigation claim of a broadcast licensee, stating that its ignorance of the law did not excuse the unauthorized transfer of the station); *Maxwell Broad. Group, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 784, 784, para. 2 (Mass Med. Bur. 1993) (denying a mitigation claim of a noncommercial broadcast licensee, stating that the excuse of "inadverten[ce], due to inexperience and ignorance of the rules . . . are not reasons to mitigate a forfeiture" for violation of the advertisement restrictions).

<sup>62</sup> *Universal Licensing Report and Order*, 13 FCC Rcd at 21071, para. 96 (noting that the renewal reminder letter is a "convenience to licensees [and] does not in any way absolve licensees from timely filing their renewal applications"). As a result, Constellium's assertion that it did not immediately receive the courtesy renewal reminders because they were sent to Alcan does not mitigate its apparent violation. See LOI Response at 3; see also *supra* note 24.

<sup>63</sup> See *Universal Licensing System MO&O*, 14 FCC Rcd at 11485, para. 22.

<sup>64</sup> See *Southern California*, 6 FCC Rcd at 4387, para. 3 (stating that "'inadvertence' . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Emigrant Storage LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8917, 8920, para. 9 (Enf. Bur. 2012) (declining to downwardly adjust a forfeiture based on company's claim that the violation resulted from oversight and a change in personnel).

<sup>65</sup> LOI Response at 4.



(consistent with precedent) to downwardly adjust the proposed forfeiture.<sup>66</sup> Moreover, Constellium's assertion that it has developed comprehensive policies and procedures to prevent any future lapse in compliance concerning its FCC licenses, while laudable, does not negate its liability for the instant violations, nor do post-investigation remedial efforts warrant reduction of the proposed forfeiture.<sup>67</sup> Finally, Constellium asserts that the severity of its violations is mitigated by the fact that the company was able to consolidate eight of its PLMRS authorizations into only four permanent authorizations at some time after the expiration and continued unauthorized operation of the eight PLMRS station licenses.<sup>68</sup> We disagree. Section 90.35 of the Rules does not limit the number of locations and frequencies that can be combined into a single authorization.<sup>69</sup> As a convenience to licensees, the Commission's Universal Licensing System permits, but does not require, licensees to consolidate PLMRS call signs.<sup>70</sup> Thus, while Constellium at a time prior to expiration of the PLMRS authorizations could have consolidated its PLMRS authorizations into fewer licenses, it did not do so. As such, the fact that Constellium later consolidated certain of the locations and frequencies into only four licenses (after significant violations had already been committed with respect to the original eight PLMRS stations) does not serve to mitigate the violations.

15. Therefore, after applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we conclude that Constellium is apparently liable for an aggregate forfeiture in the amount of \$256,000 for the unauthorized operation of the eight PLMRS stations and its failure to seek Commission authority for its continued station operations.

## 2. Unauthorized Transfer of Control of 12 PLMRS Authorizations

16. We also consider the aforementioned Section 503(b)(2)(E) factors in determining the appropriate forfeiture to propose for Constellium's violations of Section 310(d) of the Act and Section 1.948 of the Rules.<sup>71</sup> As a general matter, the base forfeiture for engaging in an unauthorized transfer of

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<sup>66</sup> As previously noted, Constellium disclosed to the Wireless Bureau in its STA Requests that the company continued to operate the stations after license expiration. Although such disclosure preceded the initiation of the Bureau's investigation, in several analogous cases the Bureau, under delegated authority, has declined to downwardly adjust a proposed forfeiture when the violator's attempts to come into compliance were dilatory, as is the circumstance here. See, e.g., *Miller Breweries East, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 127, 130, para. 12 (Enf. Bur. 2008) (finding that a downward adjustment was unwarranted when the violator waited seven months to notify Commission staff and seek authority to operate the station); *Domtar Indus., Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13816, para. 15 (Enf. Bur. 2006) (finding that a downward adjustment was unwarranted when the violator waited eight months to notify Commission staff and seek authority to operate the station); *Am. Paging Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420, para. 12 (Wireless Telecommunications Bureau, Enf. and Consumer Info. Div. 1997) (finding that a downward adjustment for voluntary disclosure was unwarranted when the violator did not reveal its violation until approximately one month after having various conversations with Commission staff regarding an STA and that a downward adjustment for good faith attempts to comply was unwarranted when the violator continued to operate the station without authorization after its STA request had been denied).

<sup>67</sup> See, e.g., *Behringer USA, Inc.*, *Forfeiture Order*, 22 FCC Rcd 10451, 10459, para. 19 (2007) ("[T]he Commission has repeatedly found that corrective measures implemented after [the] Commission has initiated an investigation or taken enforcement action do not nullify or mitigate past violations."); *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (finding that corrective action taken to comply with the Rules is expected and does not mitigate any prior forfeitures or violations); see also *BASF Corp.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17303, para. 10 (Enf. Bur. 2010) (declining to reduce forfeiture based on post-investigation remedial efforts).

<sup>68</sup> See Supplement to LOI Response at 2. See also *supra* note 28.

<sup>69</sup> See 47 C.F.R. § 90.35.

<sup>70</sup> See *id.* § 1.1102(6)(w), (x).

<sup>71</sup> 47 U.S.C. §§ 503, 510; 47 C.F.R. § 1.948.

substantial control of a Commission license is \$8,000.<sup>72</sup> In the instant case, there were apparently 12 unauthorized transfers of control of PLMRS authorizations resulting from a single transaction. In prior unauthorized transfer of control cases concerning the same types of licenses, the Commission determined that a strict mathematical exercise of multiplying a base forfeiture amount for a violation times the number of licenses involved could result in an excessive forfeiture amount.<sup>73</sup> As a result, for purposes of calculating the forfeiture penalty, the Commission has, in its discretion, decided to multiply the base amount of \$8,000 times the number of transactions at issue (as opposed to the number of licenses transferred without authorization).<sup>74</sup> We elect to apply the same approach here. As such, the base forfeiture amount for the violations here is \$8,000 because all of the licenses were transferred in a single transaction. Further, consistent with prior precedent, we will upwardly adjust the base amount after consideration of a number of factors, including the number of licenses involved (here, there are 12 at issue), ability to pay, duration of the violation, and other Section 503(b)(2)(E) factors.<sup>75</sup>

17. The unauthorized transfer of control involved a substantial number of authorizations (eight temporary authorizations to operate PLMRS stations and four PLMRS licenses), and continued for certain of those authorizations for nearly one year. In addition, as noted above, Constellium's parent company, Constellium N.V., is a multi-billion dollar global enterprise.<sup>76</sup> The severity of Constellium's apparent violation, however, is mitigated by its prompt voluntary disclosure to Commission staff of the transfer of control of Constellium's PLMRS authorizations, which preceded the Bureau's investigation of that violation and the initiation of enforcement action.<sup>77</sup> As such, we find that, based on the particular

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<sup>72</sup> 47 C.F.R. § 1.80.

<sup>73</sup> See *Central Ill. Pub. Serv. Co.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 1750, 1753, para. 7 (1999) (*Central Illinois*) (declining to calculate the forfeiture by multiplying the \$8,000 base forfeiture amount by the 88 PLMRS stations involved in the transfer, but finding that “because of the number of stations involved, we believe the total forfeiture amount should be well above the \$8,000 base forfeiture for a single violation in the guidelines”); *Enserch Corp.*, Forfeiture Order, 15 FCC Rcd 13551, 13555, para. 15 (2000) (reducing the proposed forfeiture on the basis of the policy set forth in *Central Illinois*, and noting the Commission's determination “that the number of stations involved should be treated as an aggravating factor warranting an increased forfeiture”). See also *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9672–73, paras. 11–12 (2000) (*Roadrunner*) (considering voluntary disclosure, duration of period of unauthorized operation prior to filing corrective applications, and the number of licenses involved to be important factors in determining the forfeiture amount to be \$40,000 for the unauthorized transfer of substantial control of 17 PLMRS licenses).

<sup>74</sup> See, e.g., *Central Illinois*, 15 FCC Rcd at 1753, para. 7. *Accord Roadrunner*, 15 FCC Rcd at 9672, para. 10.

<sup>75</sup> See *Roadrunner*, 15 FCC Rcd at 9672, paras. 10–12 (declining to apply “a strict mathematical exercise of multiplying a base forfeiture amount for a violation times the number of stations involved,” and “[i]nstead . . . [determining] that the number of stations involved should be treated as an aggravating factor warranting an increased forfeiture”; considering Section 503(b)(2)(E) factors such as duration and prior violations). See also *supra* note 59 (cases proposing an upward adjustment for ability to pay).

<sup>76</sup> See *supra* note 58.

<sup>77</sup> See 47 C.F.R. § 1.80(b)(8), Note to Paragraph (b)(8): *Adjustment Criteria for Section 503 Forfeitures* (establishing “good faith or voluntary disclosure” as a downward adjustment factor). The *Forfeiture Policy Statement* affords us discretion to adjust forfeitures downward in cases of voluntary disclosure. See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, para. 27; 47 C.F.R. § 1.80. But the *Forfeiture Policy Statement* neither explains what constitutes voluntary disclosure nor establishes a particular downward adjustment percentage. *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 26 (expressly declining to prescribe the amount of the voluntary disclosure adjustment and explaining instead that the adjustment must reflect “the unique facts of each case”). We emphasize the public interest benefits of express, non-dilatory, and factually detailed noncompliance disclosures provided to the Enforcement Bureau and coupled with immediate corrective action. In this case, Constellium stated that it reported the violation several days after discovery. This type of voluntary disclosure can expedite resolution of the resulting enforcement proceeding, and yield tangible benefits to the disclosing party in terms of the forfeiture penalty applied. Of course, the forfeiture we adopt in any particular case will always entail our exercise of discretion based on the particular circumstances before us.

circumstances of this case, some reduction of the forfeiture is appropriate. Given the totality of the circumstances, and applying the factors set forth in Section 503(b)(2)(E) of the Act,<sup>78</sup> Section 1.80 of the Rules,<sup>79</sup> and the *Forfeiture Policy Statement*,<sup>80</sup> we conclude that Constellium is apparently liable for an aggregate forfeiture of \$38,400 for its unauthorized transfer of control of 12 PLMRS authorizations. We therefore find Constellium apparently liable for a total aggregate forfeiture of \$294,400.

#### IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>81</sup> and Sections 1.80 of the Commission's rules,<sup>82</sup> Constellium Rolled Products Ravenswood, LLC, an indirect, wholly-owned subsidiary of Constellium N.V., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of two hundred ninety-four thousand four hundred dollars (\$294,400) for willful and repeated violations of Sections 301 and 310(d) of the Communications Act of 1934, as amended,<sup>83</sup> Sections 1.903(a) and 1.948(a) of the Commission's Rules,<sup>84</sup> and the *Universal Licensing System Orders* and associated rules.<sup>85</sup>

19. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,<sup>86</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Constellium Rolled Products Ravenswood, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 22 below.

20. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Constellium Rolled Products Ravenswood, LLC shall send electronic notification of payment to Paul Noone at Paul.Noone@fcc.gov, Pamela Hairston at Pamela.Hairston@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>87</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that Constellium Rolled Products Ravenswood, LLC should follow based on the form of payment it selects:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure

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<sup>78</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>79</sup> 47 C.F.R. § 1.80.

<sup>80</sup> See *supra* note 53.

<sup>81</sup> 47 U.S.C. § 503(b).

<sup>82</sup> 47 C.F.R. § 1.80.

<sup>83</sup> 47 U.S.C. §§ 301, 310(d).

<sup>84</sup> 47 C.F.R. §§ 1.903(a), 1.948(a), 1.949(a).

<sup>85</sup> See *supra* para. 2 & note 6.

<sup>86</sup> 47 C.F.R. § 1.80.

<sup>87</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554. If Constellium Rolled Products Ravenswood, LLC has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

22. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Commission's rules.<sup>88</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Paul Noone at [Paul.Noone@fcc.gov](mailto:Paul.Noone@fcc.gov) and to Pamera Hairston at [Pamera.Hairston@fcc.gov](mailto:Pamera.Hairston@fcc.gov).

23. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

24. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Buddy Stemple, Chief Executive Officer, Constellium Rolled Products Ravenswood, LLC, 859 Century Road, Ravenswood, West Virginia 26164; to Georgina L.O. Feigen, Esq., Butcher Feigen, LLC, 9116 Cranford Drive, Potomac, Maryland 20854; and to David H. Solomon, Esq., Wilkinson Barker Knauer LLP, 2300 N Street, N.W., Suite 700, Washington, DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>88</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).